IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

O.P.No. 14505 of 2002(S)

OA.198/2002 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:

MOHANARAJAN S.,
ASSISTANT ENFORCEMENT OFFICER,
CALICUT RESIDING AT FLAT NO.6,
YAMUNA APARTMENTS, 87, HABIBULLAH ROAD,
T.NAGAR, CHENNAI-17.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY
SECRETARY TO MINISTRY OF FINACE, NEW DELHI.

2. THE DIRECTOR OF ENFORCEMENT,
GOVERNMENT OF INDIA, MINISTRY OF FINANCE,
6TH FLOOR, LOK NAYAK BHAWAN, KHAN MARKET,
NEW DELHI.

3. THE ASSISTANT DIRECTOR,
ENFORCEMENT DIRECTORATE, CALICUT.

4. THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH, REP.BY ITS REGISTRAR.

R1 TO R4 BY ADV. SRI.P.S.SREEDHARAN PILLAI, SCGSC
SRI.JOHN VARGHESE, SCGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.24713 OF 2002 IN OP NO.14505 OF 2002

DISMISSED

Sd/- K.A.ABDUL GAFOOR,JUDGE

13/02/2007

Sd/- ANTONY DOMINIC,JUDGE

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE ORIGINAL APPLICATION ALONG WITH ALL ANNEXURES IN O.A.NO.198 OF 2002 ON THE FILE OF THE CENTRAL ADMONISTRATIVE TRIBUNAL.

EXT.P2: COPY OF THE ORDER IN O.A.NO.198 OF 2002 DATED 2.4.02 ON THE FILE OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P3: COPY OF THE LETTER DATED 2.3.1990 ADDRESSED TO THE DEPUTY DIRECTOR, ENFORCEMENT DIRECTORATE, NEW DELHI BY THE PETITIONER.

EXT.P4: COPY OF THE CORRIGENDUM DATED 6.3.1990 OF THE ENFORCEMENT DIRECTORATE.

EXT.P5: COPY OF THE APPEAL SUBMITTED BY THE PETITIONER BEFORE THE APPELLATE AUTHORITY DATED 15.4.1991.

EXT.P6: COPY OF THE NOTICE NO.C-8/1/2002 DATED 10.3.2003 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

RESPONDENTS EXHIBITS:

EXT.R3(a): COPY OF ORDER NO.C-3/10/89 DT. 31.7.90 ISSUED BY THE 2ND RESPONDENT.

EXT.R3(b): COPY OF LETTER NO.A-12/1/CLT/89 DT.2.9.91 ISSUED BY THE 3RD RESPONDENT.

EXT.R3(c): COPY OF LETTER NO.C-3/10/89 DT.4.11.91 CHIEF ENFORCEMENT OFFICER(VIG) TO SHRI.K.RAMAKUMAR, ADVOCATE.

EXT.R3(d): COPY OF TELEGRAM SENT BY ADV. SRI.K.RAMAKUMAR TO THE ENFORCEMENT OFFICER (VIG) NEW DELHI.

TRUE COPY

P.A.TO JUDGE

K.A.ABDUL GAFOOR
&
ANTONY DOMINIC, JJ

O.P.14505/2002 (S)

Dated this the 13th day of February, 2007

JUDGMENT

K.A.Abdul Gafoor, J.

Ext.P1 Original Application, filed by the writ petitioner, was dismissed as per Ext.P2, on the ground of delay and latches, being beyond the time of limitation provided under Section 21(1)(b) of the Administrative Tribunals Act, 1985. Therefore, this writ petition.

2. It is submitted by the counsel for the petitioner that the writ petitioner was proceeded against by way of disciplinary action and he was removed from service as per Annexure-A1 order to Ext.P1 O.A., dated 31.7.1990. This removal from service was without serving him a copy of the enquiry report. As revealed by the order imposing penalty, the enquiry report was forwarded along therewith. It is vehemently contented relying on the decision of the Apex Court in **Alligarh Muslim University and Others v. Mansoor Alikhan (2000 (7) SCC 529),** that it vitiates the entire proceedings.

3. It is further submitted that the Tribunal ought to have considered this aspect rather than dismissing the Original Application on the ground of delay. Background of this submission is that the appeal against the order of removal was preferred as per Ext.P5, produced along with I.A.3449/2003 on 15.4.1991. It is submitted that there was a hearing notified directing the appellant to be present for hearing on 15.9.1991. On that date, the petitioner could not appear. He sought for an adjournment. Thereafter, hearing was notified to 3.11.1992, as is revealed from the counter affidavit of the respondent. It is submitted that his counsel had been heard by the appellate authority on 3.11.1992 and, thereafter, nothing was informed to him inspite of reminders. The hearing date of 3.11.1992 itself was beyond the date of limitation provided in Section 21 (1)(b) of the Act. Therefore, the Tribunal ought not have dismissed the Original Application at the threshold, on the ground of delay.

4. The limitation for filing Original Application before the Central Administrative Tribunal is as contained in Section 21. Section 20(2)(b) makes it clear that no application shall be admitted by a Tribunal, “where no final order has been made by the Government or other authority or officer or other person

competent to pass such order, with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made". Admittedly the appeal was preferred on 15.4.1991. Necessarily no Original Application could have been filed upto 14.10.1991. In other words, from 15.10.1991 onwards, he could have filed the Original Application even against the original order imposing the penalty. Such time for filing an Original Application will be available as provided under Section 21(1)(b) which provides that :-

> (1). A Tribunal shall not admit an application,-
>
> (b). in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

5. True. The date of hearing as mentioned above was on 3.11.1992, a date beyond the period of one year mentioned

in the said clause which expired on 14.10.1992. According to the counsel for the petitioner, a hearing had taken place on 3.11.1992. Thereafter, in respect of the reminders, he was not given communication about the result of the appeal.

6. Really the limitation provided under Section 21(1)(b) is in respect of such category of persons who are not left to wait unendingly for the disposal of the appeal going by the said provision of limitation. Such incumbent ought to have approached the Tribunal without waiting for an order in appeal, within one year from the date of completion of six months from the date of filing appeal. In this case, when appeal had been heard on a date after completion of the said one year, the petitioner could have waited for reasonable time and could have preferred an Original Application seeking condonation in terms of Sub Section 3 of Section 21. Instead, the petitioner had waited nearly a decade to file the Original Application. It is in the above circumstances, the Tribunal had found the latches and delay on the part of the petitioner to dismiss the Original Application. This delay of a decade has not been explained except to submit that he had been continuously representing and waiting for the disposal of the appeal, as mentioned above. Such situation would have to be tackled, in terms of the

limitation provided in Section 21(1)(b). But this is a case of inordinate delay of more than nearly a decade. Therefore, the Tribunal was justified in courting out the petitioner, especially whenever no statutory representation can be availed off to save the period of limitations. Even a subsequent hearing given as per Ext.P6 was not properly made use of. It is yet another reason to conclude that the petitioner was not even interested in pursuing the matter.

The writ petition is dismissed as above.

K.A.ABDUL GAFOOR, JUDGE

ANTONY DOMINIC, JUDGE

mrcs